



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	04/16/01	Bill No:	AB 1388
Tax:	Sales and Use	Author:	Aanestad
Board Position:	Neutral	Related Bills:	AB 1198 (Matthews)

BILL SUMMARY

This bill would exempt from sales and use tax the sale and purchase of propane gas.

ANALYSIS

Current Law

Sales or use tax applies to the retail sale of tangible personal property in this state, unless specifically exempted by statute. Section 6353 of the Sales and Use Tax Law currently provides an exemption from sales and use tax for the sale or use of gas delivered to consumers through mains, lines, or pipes. Thus, sales of propane gas delivered to consumers through mains, lines, or pipes currently qualify for exemption from tax.

However, in order to qualify for the exemption under Section 6353, the propane gas must be sold in vaporized form and delivered to the purchaser through mains, lines or pipes. The Board has determined that this requirement is met even if the gas is initially delivered in liquid form into a tank on the purchaser's premises if the tank belongs to the seller of the gas, or is leased by the purchaser to the seller and there is an explicit agreement between them stating that the seller retains title to and possession of the propane until it is delivered in vapor form to the customer through the customer's mains or pipes. Virtually all sales of propane gas for residential use, except for use in barbecues, could qualify for this exemption if the parties were to properly structure the transactions. However, not everyone takes advantage of this exemption in part because of the difficulty in understanding how to comply with its requirements. As a result, essentially identical sales of propane gas are subject to tax, or not, based solely on whether the parties understand the requirements of the exemption.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

Proposed Law

This bill would add Section 6353.1 to the Sales and Use Tax Law to provide an exemption from sales and use tax for the sale and use propane gas.

Background

The original Retail Sales Tax Act, enacted in 1933, provided the current exemption from sales and use tax of gas, electricity, and water when delivered to consumers through mains, lines or pipes.

Chapter 402 of the Statutes of 1972 expanded this exemption to include water sold in bulk quantities of 50 gallons or more for general household use if the residence is not serviced by mains, lines, or pipes.

Chapter 1010 of the Statutes of 1978 included exhaust steam, waste steam, heat or resultant energy, produced in connection with cogeneration technology.

Chapter 420, Statutes of 1986, specified that water delivered through mains, lines or pipes, for purposes of the exemption, includes steam and geothermal steam, brines and heat.

Bills similar to AB 1388 have been considered in the past. During the 2000 Legislative Session, AB 1788 (Machado) was held in the Assembly Appropriations Committee. During the 1999 Legislative Session, AB 214 (Machado) was held in the Assembly Appropriations Committee. In the 1997-98 Legislative Session, AB 1019 (Machado) was held in the Senate Appropriations Committee. In the 1995-96 Session, SB 1455 (Leslie) failed passage in the Senate Revenue and Taxation Committee. The Board voted to support AB 1788, and took a neutral position on the remainder of the bills.

Other bills proposing to exempt various fuel and gas substances for residential use not delivered through mains, lines or pipes include: AB 149 (Chappie) of the 1977-78 session, AB 359 (Chappie) of the 1979-80 session, AB 10 (Kelly) and AB 130 (Lockyer) of the 1981-82 session, AB 2203 (Kelly) of the 1983-84 session, AB 2117 (Hannigan) and AB 2562 (Seastrand) of the 1985-86 session and AB 127 (Areias) of the 1987-88 session.

COMMENTS

- 1. Sponsor and purpose.** The author is the sponsor of this bill and the purpose is to provide equal tax treatment for those who must use propane gas. The residences of the majority of affected consumers are not located in areas serviced through mains, lines, or pipes. Their purchases of propane gas can qualify for the existing exemption only when they meet all the requirements for that exemption even though these consumers use the propane gas for cooking and heating just as other consumers who reside in areas serviced through mains, lines, and pipes use electricity and natural gas.

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2. **Summary of April 16 amendments.** Amendments to this bill consist of providing that the proposed statute shall be known and may be cited as “The California Propane Accessibility Act” and adding co-authors.
3. **Proposed exemption would apply to all propane gas sales.** This proposed exemption would apply to sales of propane gas for residential use in addition to sales of propane gas for commercial, agricultural, and industrial use.
4. **The record-keeping of propane gas sellers would simplify.** Many propane gas sellers provide a complete propane gas service. In addition to selling propane gas for residential purposes, many sell for commercial, industrial, agricultural, motor fuel, and forklift purposes. In order to qualify for the existing exemption provided by Section 6353, the seller must separately account for these transactions, and additionally must enter into a special contract with the purchaser, and must maintain that contract to support the claimed exemption. Enactment of this measure would eliminate the record-keeping requirements to support claimed exempt sales because the sellers would not need to enter into, or retain, these types of contracts.
5. **Related Legislation.** AB 1198 (Matthews) would exempt from sales and use tax the sale and purchase of liquefied petroleum gas (LPG) that is delivered to a “qualified residence,” as defined, by the seller, that is sold for household use in the qualified residence. The Board voted to support AB 1198.

COST ESTIMATE

Some costs would be incurred in notifying affected retailers, answering inquiries, revising regulations and verifying deductions claimed on propane gas sellers’ sales tax returns. These costs would be absorbable.

REVENUE ESTIMATE

The American Petroleum Institute (API), in conjunction with the National Propane Gas Association (NGPA), Gas Processors Association (GPA) and the Propane Education and Research Council (PERC), annually collects statistics on the ‘Sales of Natural Gas Liquids and Liquefied Refinery Gases’. The latest report compiled indicated sales of 499 million gallons of propane in California in 1999. Users in California included residential and commercial (60%), chemical and industrial (26%), internal combustion fuel (8%) and farms (6%).

Using the U.S Department of Energy’s 1999 average price for propane for the Western region (\$0.94 per gallon), it is estimated that propane sales in California amounted to \$469 million ($\$0.94 \text{ per gallon} \times 499 \text{ million gallons} = \469 million).

Some of the LPG sold for residential use is already exempt under Section 6353 because the gas was delivered through mains, lines or pipes. Based on information derived from a survey conducted by the Board on propane dealers in California, we estimate that approximately \$73 million of the LPG sold for residential use is currently exempt.

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The estimated sales of propane that would be subject to the provisions of this bill would be \$396 million.

Revenue Summary

The revenue impact from exempting propane gas from the sales and use tax would be as follows:

	<u>Revenue Loss</u>
	<u>(in millions)</u>
State * (5.00%)	\$ 19.8
Local (2.25%)	8.9
Special District (0.67%)	<u>2.7</u>
Total	<u>\$ 31.4</u>

* The state sales and use tax rate will be 4.75% for calendar year 2001 and is scheduled to be 5% in calendar year 2002.

Analysis prepared by:	Bradley E. Miller	445-6662	06/15/01
Revenue estimate by:	David E. Hayes	445-0840	
Contact:	Margaret S. Shedd	322-2376	

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